IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA EASTERN DIVISION No. 4:07-CV-16-H(2)

| JOHN D. HORTON, |) | |
|---------------------------|--------|-------|
| Plaintiff, |)) | |
| |) | |
| v . |) | ORDER |
| |)) | |
| UNITED STATES OF AMERICA, |)) | |
| Defendant. |) | |

This matter is before the court on the government's motion to dismiss, or in the alternative for summary judgment. The plaintiff has not responded, and the time for doing so has expired. This matter is ripe for adjudication.

Plaintiff filed the complaint in this action on August 1, 2006, in the United States District Court for the District of Kansas, alleging false imprisonment in violation of the Federal Tort Claims Act and the statutes and common law of the state of North Carolina. By order filed January 19, 2007, the action was transferred to this court. The government filed the motion to dismiss, or in the alternative, for summary judgment on July 5, 2007. A Rule 12 letter was issued to the plaintiff on July 5, 2007; however, plaintiff did not respond to the motion.

The facts alleged in the complaint in the instant matter comprise part of the same transaction or occurrence as the facts alleged in the complaint filed by plaintiff in Horton v. Shull, et al., 5:04-CV-227-BO (E.D.N.C. Mar. 28, 2005). That case was dismissed with prejudice on March 28, 2005. "A final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." Federated Dept. Stores v. Moitie, 452 U.S. 394, 398 (1981) (citing Commissioner v. Sunnen, 333 U.S. 591, 597 (1948), Cromwell v. County of Sac, 94 U.S. 351, 352-353 (1877)).

Because plaintiff is simply attempting to relitigate issues and claims that were previously raised or could have been raised in the prior action against one of the same defendants named in the previous suit, this action must be dismissed. See Federated Dept. Stores, 452 US at 398; Fed. R. Civ. P. 41(b) (involuntary dismissal under this rule, unless otherwise noted, operates as an adjudication on the merits). Therefore, the government's motion is GRANTED, and this case is hereby DISMISSED. The clerk is directed to close the case.

This 30 day of October 2007.

MALCOLM J. HOWARD

Senior United States' District Judge

At Greenville, NC #26